

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF OREGON

3 THE HON. MICHAEL J. McSHANE, JUDGE PRESIDING

4  
5 UNITED STATES OF AMERICA, )

6 Government, )

7 vs. ) No. 6:14-cr-00482-MC-1

8 DANIEL STEPHEN JOHNSON, )

9 Defendant. )

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11 REPORTER'S TRANSCRIPT OF PROCEEDINGS

12 EUGENE, OREGON

13 Wednesday, May 2, 2018

14 Day 3, Morning Session

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## WITNESS INDEX

Page/Line;

LS XXXXX		
DIRECT EXAMINATION (Continuing)	163	4
BY MR. SINHA		
CROSS EXAMINATION	174	5
BY MS. MAXFIELD:		
REDIRECT EXAMINATION	183	12
BY MR. SINHA		
RECROSS EXAMINATION	200	3
BY MS. MAXFIELD:		

## EXHIBIT OFFERED INDEX

NONE

## EXHIBIT RECEIVED INDEX

NONE

## PROCEEDINGS

Wednesday, May 2, 2018, at 9:11 a.m.

THE COURT: We will go on the record. I've received from the government a request for judicial notice regarding per diem rates, witness fees, my understanding is there's no objection.

MR. WEINERMAN: No, Judge, as long as it's clear from the way it says to the jury that they are getting \$99 a day, so there's no confusion whether they are getting it. I think they get something for \$49 and something for \$50, and as long as they know the correct math of the total of \$99 is clear, we have no objection.

THE COURT: I think it's clear. In the -- how do you want to present that to the Jury?

MR. SINHA: Your Honor, we would ask that the Court read it to the jury when they come in this morning, and then provide it to them for deliberations. I think there's a pattern instruction on the 9th Circuit, but I am not sure it's applicable here because I think this is like a legislative fact, rather than adjudicative fact.

MR. WEINERMAN: Judge, I haven't been in this situation recently, but I'm not sure the jury actually gets documents that are not an exhibit. I think when you take judicial notice or you stipulate, the judge reads the stipulation or judicial notice, and that's it. It doesn't go

1 back as a document. It's not an exhibit.

2 THE COURT: Well, I mean, generally we send  
3 stipulations back, and this is really -- judicial notice is  
4 really a stipulated fact. So I prefer to send it back, if  
5 for the only reason I am going to be reading it to them, and  
6 my voice is still not that great. And I would like to make  
7 sure that they understand what fact is being noted here.

8 So I will work with Mr. Allnatt about what  
9 specifically to send back.

10 Any other preliminary matters to discuss?

11 MS. BRITSCH: Your Honor, one matter, the defense  
12 raised at the end of yesterday that the information from  
13 SO XXX's attorney is potentially Brady, under Kyles and its  
14 progeny. So I think we need to address that. The 9th  
15 Circuit has said in a couple of cases that essentially when  
16 there's no promise by the government to a witness, it's not  
17 Brady material.

18 And that's primarily in the context of sentence  
19 leniency where cooperating witnesses later on receive a  
20 sentencing reduction. But the 9th Circuit and other courts  
21 have said as long as there's no promise from the government  
22 before that witness testifies, that's not Brady. And that  
23 applies here.

24 And it's clear from Mr. Weinerman's questioning of  
25 the witness yesterday and his answers that there's been no

1 promise from the government of a visa or other citizenship,  
2 so I don't think any other information from SO XXX's attorney  
3 would be Brady in this scenario.

4 MR. WEINERMAN: Well, Judge, I think it's relevant  
5 whether he has an expectation that he's going to be allowed  
6 to stay in the United States.

7 I'm going to continue to reach out directly with his  
8 attorney and find out what I can. And I am not accusing  
9 anyone of any wrongdoing, but it seems to me that these  
10 witnesses can get up there and say, deny or say, I don't  
11 know. And then the next thing we know after they are done  
12 here, they are going out and they are trying to stay in the  
13 United States.

14 And I hope the Court will give me a little more  
15 leeway for future witnesses to explore that, because I have  
16 no indication that the government itself, the US Attorney's  
17 office or the FBI, has promised them anything.

18 But I think any discussions that anybody from the  
19 government has had with any of these witnesses about staying  
20 here, about applying for visas, should be disclosed to the  
21 defense.

22 And the government has, I believe, one witness, CCXX  
23 XXXX asked if he could stay or apply for a green card, and  
24 the government provided me a report.

25 So I am just saying expectations of the witness is

1 relevant. And if the government is aware of expectations,  
2 then I think the government should disclose that. I think  
3 that is Brady --

4 MS. BRITSCH: Your Honor, the defense counsel had  
5 ample opportunity to ask the witness about his expectations,  
6 and the witness answered those questions. And for the  
7 record, we have inquired of everyone on the trial team  
8 whether they have had any discussions with the witnesses  
9 about those issues, or made any promises. And nobody from  
10 the US Attorney's office or FBI has made any promises related  
11 to visa or citizenship.

12 There's one FBI agent we haven't had a chance to  
13 ask. We will ask him today about that specific issue, as  
14 well. And the witness, BT XXXXXXXX is material. His A file,  
15 everything related to his visa, has been disclosed to the  
16 defense.

17 THE COURT: Thank you. I do agree with the defense  
18 that if the government is aware of any promises that have  
19 been made by a government actor, or even a third party to --  
20 any promise to assist in providing a visa or providing some  
21 kind of residency in the United States for the witnesses in  
22 exchange for their testimony, the government needs to  
23 disclose that. I think they have been doing that.

24 I mean, the only evidence so far is from S0 XXX  
25 which he testified an attorney spoke to him. He doesn't

1 remember the attorney's name. He didn't keep the attorney's  
2 card. He asked the attorney if he could go to school in the  
3 United States, and it doesn't sound like there was any  
4 follow-up conversation regarding that.

5 So the defense can continue to inquire about --  
6 well, with each of the alleged victims whether any promises  
7 have been made, whether they are making any attempts to  
8 remain in the United States now that they are here, or now  
9 that they have testified.

10 It may be that the government is going to want to  
11 put on whatever this organization is to clarify for the jury  
12 what their role is with victims. It's unclear to me, and  
13 it's unclear to the jury, I think, what this program is,  
14 Hagar, whether they were simply advocates for children of  
15 sexual abuse, or if they provide other kinds of services like  
16 immigration services.

17 I think it's probably unlikely, but it may be  
18 possible. But obviously, one of the jurors had a question  
19 about who this organization was, and what they do. We may  
20 want to have some clarification on that subject.

21 MR. WEINERMAN: Judge, hopefully my last thoughts on  
22 this are as follows. SO XXX is, I think, done as a witness,  
23 although technically I don't think he's been excused. Maybe  
24 the Court did and I just --

25 THE COURT: I haven't excused any of the witnesses.



1 MR. WEINERMAN: My understanding is all the  
2 witnesses are going to remain until May 20th. So that's  
3 almost three weeks. It seems to me if the government becomes  
4 aware between now and the end of the trial that SO XXX is  
5 making some efforts to stay in the country, however he's  
6 doing it, whether applying for a certain type of visa, I  
7 think the government has to disclose that. The government  
8 can't wall themselves off from that.

9 So if it comes to the attention of the government  
10 between now and the end of the trial that SO XXX is  
11 proceeding in that direction, that has to be disclosed to the  
12 defense even though SO XXX is done as a witness.

13 THE COURT: I agree. If that becomes known to the  
14 government, they need to let the defense know.

15 MS. BRITSCH: We agree, Your Honor.

16 THE COURT: We will bring the jury back in. And we  
17 have LS X.

18 (JURY IN.)

19 THE COURT: We're going to return to the testimony  
20 of witnesses, so go ahead.

21  
22 LS XXXXX,  
23 produced as a witness, having been previously duly  
24 sworn, was examined and testified as follows:  
25

1 (NOTE: Unless otherwise indicated, all answers  
2 represented by "A" and "THE WITNESS" will be answers given by  
3 the witness through the interpreter after translation.)

4 DIRECT EXAMINATION (Continuing)

5 BY MR. SINHA:

6 Q Good morning. Thank you for coming back to speak to us  
7 today. I don't have a lot of questions for you, but I do  
8 have some. So we will go through those questions and then  
9 Mr. Johnson's attorneys will have a chance to ask you some  
10 questions.

11 Do you understand?

12 A Yes, I do.

13 Q The first thing I want to do with you is go through some  
14 photographs, and talk to you a little bit about them. So I  
15 am going to ask for Exhibits 1 through 10 to be brought up on  
16 the screen in order. And we will go through them one by one.

17 MR. SINHA: I believe these have been admitted and I  
18 would ask the Court to publish them.

19 THE COURT: They may be published.

20 Q BY MR. SINHA: So LS X, we're looking at Government  
21 Exhibit 1. And who is the person in this photograph?

22 A It's my picture.

23 Q Do you know about how old you were, about?

24 A Five or six years old.

25 Q Let's look at Exhibit No. 2. Do you know the people in

1 this picture?

2 A I do.

3 Q So LS X, this is going to be kind of fun. You can touch  
4 this screen, and it will make a mark.

5 So will you touch each one of these people on the  
6 screen and tell us who they are, please?

7 A This one is Tola.

8 Q And that's the person in the orange shirt?

9 A Yes. This one is me.

10 Q That's the smallest person, in the striped shirt?

11 A Yes.

12 Q Who else?

13 A And the other two, I don't remember anymore.

14 Q So you have identified two orange shirts. You have  
15 identified the tallest person and the shortest person; is  
16 that right?

17 A Yes.

18 Q Let's look at Exhibit 3. LS X, who is this?

19 A That's me.

20 Q How old are you in this photograph?

21 A Five to six years old.

22 Q Where was this photo taken?

23 A At the organization.

24 Q And when you say at the organization, what organization  
25 are you referring to?

1 A It was Hope Organization.

2 Q And when you -- we're going to talk a little bit about  
3 where the Hope Orphanage was, but did you live with the Hope  
4 Organization at three different locations?

5 A Yes.

6 Q So let's go to the next exhibit. This is Exhibit 4.  
7 Who are these two people?

8 A My older brother and me.

9 Q What are you wearing in this photograph?

10 A Gray and white.

11 Q And do you know about how old you guys were in this  
12 photograph?

13 THE INTERPRETER: I am sorry. The interpreter says  
14 gray and white, but it's gray and blue.

15 THE WITNESS: About five to six years old.

16 Q BY MR. SINHA: That's how old you were?

17 A Yes.

18 Q And where were you guys living at this time, if you  
19 recall?

20 A It was at the same place. It was the first place.

21 Q And LS X, I think earlier yesterday, when we talked  
22 about your age and when you moved to Hope, we thought it was  
23 closer to when you were about seven years old.

24 A Yes.

25 Q Is it possible in these photographs that were taken when

1 you were living at Hope, that you were closer to seven years  
2 old?

3 A Yes.

4 Q Let's go to the next exhibit, Exhibit 5, please.

5 So LS X, who is this and when was this?

6 A It's my picture during Christmas.

7 Q Where were you living at this time?

8 A That was also at the first house.

9 Q And about how old were you in this photograph, if you  
10 know?

11 A The same thing, maybe five, six, or seven.

12 Q Let's go to the next exhibit, please. Okay, LS X, is  
13 this you, as well?

14 A Yes.

15 Q About how old were you in this photograph?

16 A Maybe between eight and 10.

17 Q And you were living at the Hope Transition Center at  
18 this time?

19 A Yes.

20 Q Let's go to Exhibit No. 7, please. Who are these two  
21 young men?

22 A It's me and a friend of mine.

23 Q And about how old were you in this photograph?

24 A Eight, nine or 10.

25 Q And so this was also taken during the period that you

1 were living at the Hope Transition Center?

2 A Yes.

3 Q Let's go to the next photograph. How about this  
4 photograph? How old were you in this photograph?

5 A That one, maybe I was nine, 10, or 11.

6 Q But that is you in the photo?

7 A Yes.

8 Q Let's go to the next photograph, please. Who is this?

9 A That's me.

10 Q And about how old were you in this photograph?

11 A 12 or 13.

12 Q But you were still living at Hope Transition Center  
13 during this time, or you were gone, I guess?

14 A Yes.

15 Q Let's go to the next one, please, 10. And then finally,  
16 this is you as well, correct?

17 A Yes.

18 Q I am going to show you three pictures of the Hope  
19 Transition Center, next.

20 MR. SINHA: In the first one, 271, I would ask that  
21 it be brought up and published to the jury, please.

22 THE COURT: All right.

23 Q BY MR. SINHA: Was this the first, second or third  
24 location that you were with the Hope Transition Center?

25 A That was the first house for me.

1 Q How about Exhibit 272, please. This one, and the next  
2 one will be published, please.

3 Is this the second or third house?

4 A Second house.

5 Q And then finally, the third one, Exhibit 139, please.  
6 This seems like -- is this the third house?

7 A Yes.

8 Q So LS X, yesterday we talked about some difficult  
9 subjects, and I am not going to ask you a lot of questions  
10 about those today. I just have a couple of follow-up  
11 questions.

12 Yesterday you told us about incidences in which  
13 Daniel Johnson had sexually abused you, pretty much during  
14 the time you were at Hope Transition Center.

15 A Yes.

16 Q Following those instances in which he abused you, did he  
17 ever give you any food or money or gifts?

18 A Yes.

19 Q What did he give you?

20 A Sometimes cookies, and sometimes money.

21 Q Was that in the bedroom where the abuse was taking  
22 place?

23 A Yes.

24 Q And how soon after the abuse did he give you money or  
25 give you cookies?

1 A Sometimes immediately, sometimes a little bit after.

2 Q Did you understand that the money or the cookies that he  
3 was giving you was, in part, because of what he had just done  
4 to you?

5 A Yes.

6 Q So a better way for me to ask that question is, was  
7 there a connection between --

8 MS. MAXFIELD: Objection; calls for speculation and  
9 legal conclusion.

10 THE COURT: He can testify as to his understanding.

11 Q BY MR. SINHA: So what I would like to ask, LS X, did  
12 you understand there to be a connection between the abuse and  
13 the money and cookies that Daniel was giving you immediately  
14 afterwards?

15 A Would you repeat that, please?

16 Q Sure. Did you understand the money and the cookies that  
17 Daniel gave you after the abuse to be as a result of the  
18 abuse?

19 A Yes, I do.

20 Q LS X, when Daniel was abusing you throughout this  
21 period, and I think you said it was a few times a week, were  
22 you ever scared that something bad might happen if you didn't  
23 submit to him abusing you?

24 A Yes.

25 Q What types of things were you scared of?



1 A Like he did something to me, like police or something.

2 Q When you say he would do something to you like the  
3 police, can you explain that a little bit more?

4 A Because of what happened, it happened, the same thing  
5 over and over again, then it could cause the police to come  
6 over. And then the police would ask -- and asking questions  
7 in depth.

8 Q And were you scared that you were going to get in  
9 trouble?

10 A Yes.

11 Q Were you scared of having to tell the police what had  
12 happened?

13 A Yes.

14 Q Were you ever scared that if you didn't submit to Daniel  
15 Johnson abusing you, Daniel Johnson would do you any physical  
16 harm?

17 MR. WEINERMAN: Objection; leading.

18 THE COURT: Overruled.

19 THE WITNESS: At times, yes.

20 Q BY MR. SINHA: What physical harm did you think he might  
21 do?

22 A He pulled your hair.

23 Q Did he do anything else?

24 A No.

25 Q Did you ever see him physically harm any of the other

1 boys at Hope Transition Center?

2 A No, I haven't seen that.

3 MR. SINHA: Your Honor, if I could have just a  
4 moment, please.

5 Q BY MR. SINHA: So LS X, I have a couple questions for  
6 you. When Daniel Johnson was abusing you throughout this  
7 period that you lived at Hope Transition Center, how did you  
8 feel about Daniel Johnson?

9 A At times you didn't like him. And at times you loved  
10 him like your father.

11 Q And why were the reasons that you loved him like a  
12 father?

13 A Because he provided food, and schooling.

14 Q And when you didn't like him, what were the reasons that  
15 you didn't like him?

16 A Because he violated me, and he sexually abused me.

17 Q And as you sit here today, how do you feel about him?

18 A I feel kind of like nervous.

19 Q I can understand that. Why do you feel nervous?

20 A I don't know. I just feel scared.

21 Q Are you -- as you sit here today, are you angry about  
22 Daniel Johnson?

23 A No, I don't --

24 Q Have you forgiven him for what he's done to you?

25 A Yes.

1 Q LS X, why is it that you have been willing to come here  
2 and testify today?

3 A Because I want to come and testify, and I want it to be  
4 over fast.

5 Q What are you going to do once you are done testifying  
6 and the case is over?

7 A Going back to Cambodia, and then continue my schooling,  
8 just like usual.

9 Q And are you excited about going back to Cambodia?

10 A Yes.

11 Q Why are you excited about going back there?

12 A I get to continue my schooling, because I have been here  
13 and I have been not going to school for about a month now.

14 Q Have you enjoyed your time in the United States?

15 A Yes.

16 Q LS X, has anyone talked to you about applying to live in  
17 the United States permanently?

18 A No.

19 Q Is your testimony today motivated in any way by wanting  
20 to live in the United States permanently?

21 A Well, I want to stay.

22 Q But are you testifying today because you want to stay?

23 THE INTERPRETER: Counsel, if the interpreter could  
24 ask you to rephrase the question, because the word  
25 "motivation" did not quite translate correctly.

1 MR. SINHA: Okay.

2 Q BY MR. SINHA: Does your testimony today have anything  
3 to do with wanting to stay in the United States?

4 A I still don't understand.

5 Q When you talked to the Cambodian National Police in  
6 2013, and you told them that Daniel Johnson sexually abused  
7 you, did you tell them that because you wanted to eventually  
8 move to the United States?

9 A No.

10 Q Why did you tell them that?

11 A Because it was the truth, and on top of that, they were  
12 asking the same questions over and over again, and I -- to  
13 make me answer.

14 Q When you spoke to FBI Martha in 2014 and you told her  
15 that Daniel Johnson sexually abused you, did you tell her  
16 that because you wanted to move to the United States?

17 A No.

18 Q Why did you tell her that?

19 A Because I want it to be over, and because it is the  
20 truth.

21 Q And then when you spoke to us yesterday and you told us  
22 that Daniel Johnson abused you, did you tell us that because  
23 you wanted to stay in the United States?

24 A No.

25 Q Why did you tell us what happened?

1 A Because I want this story to be over.

2 MR. SINHA: One second. Thank you, LS X.

3 Your Honor, I will pass the witness.

4 THE COURT: All right. Cross.

5  
6 CROSS EXAMINATION

7 BY MS. MAXFIELD:

8 Q Good morning, LS X. I am Lisa Maxfield, and I represent  
9 Mr. Johnson. Do they call you LS X or Luke?

10 A LS X.

11 Q LS X, do you remember the day that the Cambodian  
12 National Police came to Hope Transition Center?

13 A I don't. I don't remember. I don't remember very well.

14 Q That's sort of vague in your memory?

15 A Correct. I don't remember very well.

16 Q Do you remember how many police came? Was it many  
17 police or just a few?

18 A Many.

19 Q And do you remember whether some of the children were  
20 afraid?

21 A Majority of us who knew what was going on, we were  
22 afraid. But the younger ones, they didn't know, so they were  
23 just running around playing.

24 Q So the older kids who understood the seriousness were  
25 afraid?

1 A Yes.

2 Q And when you talked to the Canadian National Police, how  
3 many police officers talked to you --

4 THE INTERPRETER: Counsel, you said Canadian.

5 MS. MAXFIELD: I made them Canadian.

6 Q BY MS. MAXFIELD: When you talked to the Cambodian  
7 National Police, how many police officers questioned you?

8 A Four or five people.

9 Q Four or five people at the same time?

10 A So it was like there were three of them, so two would  
11 walk around, arranging different things. And then one would  
12 ask.

13 Q But they were all there with you, when you were being  
14 questioned?

15 A Yes.

16 Q Did the police separate you from your brother, ES XXX?

17 A Yes, they separated us.

18 Q Did they separate you from any other children?

19 A Yes, they did. But some of the children were with me.  
20 They separated us, and they came with me to live at another  
21 organization.

22 Q Let's talk about while you were still being questioned  
23 by the police. You said that they asked you questions again  
24 and again and again. Did that happen at the Hope Transition  
25 Center?

1 A Yes.

2 Q So they asked you -- they would not stop questioning you  
3 until you told them that you had been touched?

4 A Yes.

5 Q That was the only way to make the questioning stop?

6 A Yes.

7 Q And after all the questioning, it was late at night; is  
8 that true?

9 THE INTERPRETER: I am sorry, Counsel. Did you say  
10 after?

11 Q BY MS. MAXFIELD: Yes, was it late at night by the time  
12 the questioning was finished?

13 A Yes.

14 Q And after the questioning, did they put you on a bus and  
15 take you to a new place to live?

16 A Yes.

17 Q Did you get to say goodbye to your brother?

18 A No, I didn't get to.

19 Q When you were living at the new place, your brother was  
20 not there; is that true?

21 A Correct.

22 Q And while you were living at the new center, your  
23 brother was not allowed to visit you?

24 A Yes.

25 Q They kept you and your brother separated for over two

1 years, didn't they?

2 A Yes.

3 Q Did anyone else in your family get to visit you at the  
4 center?

5 THE INTERPRETER: The interpreter was clarifying if  
6 an aunt and uncle.

7 THE WITNESS: My family members did not, but my mom  
8 and aunt came to see me.

9 Q BY MS. MAXFIELD: How many times did your mom and your  
10 aunt come to see you?

11 A Once or twice a month, according to the time that they  
12 had.

13 Q At Hagar, did they give you food?

14 A Yes.

15 Q And did they give you good shelter?

16 A Yes.

17 Q And did they let you go to school and pay for your  
18 school?

19 A Yes.

20 Q Did the people at Hagar give you any money?

21 A No.

22 Q Did they give you any gifts?

23 A Yes, they gave me one.

24 Q What was that?

25 A Cologne and some stuffed animals.



1 Q Was that for Christmas or your birthday?

2 A They were for Christmas.

3 Q Did you remember going to talk to, I believe you called  
4 her FBI Martha?

5 A Yes, I do recall.

6 Q When you went to talk to FBI Martha, did your teacher  
7 from Hagar go with you?

8 A Yes.

9 Q Did she sit in the room with you when FBI Martha asked  
10 you questions?

11 THE INTERPRETER: I am sorry, Counsel. Did you say  
12 "he" or "she"?

13 Q BY MS. MAXFIELD: Was your teacher a she or a he? Let's  
14 start there.

15 MR. SINHA: Could we approach and talk about  
16 something real quickly, please?

17 THE COURT: Yes.

18 (Bench Conversation)

19 (Brief recess taken from 9:55 a.m.  
20 to 9:56 a.m.)

21 THE COURT: Can you ask the question?

22 Q BY MS. MAXFIELD: Well, let's go back to the question.  
23 Your teacher from Hagar who went with you to see Martha, or  
24 FBI Martha, was that a man or a woman?

25 A There were men and women.

1 Q Two?

2 A Yes.

3 Q So you had two teachers from Hagar with you?

4 A Some of them were not teachers. They were attorneys.

5 Q They were attorneys?

6 A There was an interpreter, too.

7 Q So in the room with you was FBI Martha, your teacher  
8 from Hagar, a translator or interpreter; is that true?

9 A My teacher did not go in with me. Just myself, and FBI,  
10 and interpreter.

11 Q You have talked with lots of lawyers over the last few  
12 days; is that true?

13 A Yes.

14 Q Before you came to the United States, did you talk with  
15 any lawyers?

16 A Yes.

17 Q Did you have a personal lawyer, or someone who was just  
18 your lawyer that you talked with?

19 A I spoke with.

20 Q Do you remember that lawyer's name?

21 A I don't remember his name.

22 Q Did that lawyer call you on the phone, or meet with you  
23 in person?

24 A In person.

25 Q And did Hagar pay for that lawyer?

1 A I wouldn't know that. I don't know anything about the  
2 payment.

3 Q Was that lawyer from the United States?

4 A Yes.

5 Q And when you talked with that lawyer, did you talk to  
6 him about maybe moving to the United States?

7 A Yes, I did.

8 Q And have you talked with that lawyer since you have been  
9 here, or another lawyer since you have been here in the  
10 United States about staying here?

11 A I did.

12 Q Do you think there's some chance that you will be able  
13 to stay?

14 A I hope, but I don't think I can.

15 Q You lived at Hagar for a little over two years; is that  
16 right?

17 A Almost two years.

18 Q And then did you get to live with your brother, ES XXX?

19 A No, I didn't.

20 Q You never lived with ES XXX after Daniel's arrest?

21 A Correct.

22 Q Who do you live with now?

23 A I am currently living with the Water of Life  
24 Organization.

25 Q And are there any people in this case who live with you?

1 A I don't understand your question.

2 Q Yeah. Well, are any of the kids that you used to live  
3 with at Hope Transition Center living with you now?

4 A You mean now, as in the US?

5 Q Oh, no. In Cambodia.

6 A No.

7 Q When you talked with FBI Martha, do you remember telling  
8 her that you wanted to come to the United States to go to  
9 school to be a doctor?

10 A Yes, I did tell her that.

11 Q Is that still your hope?

12 A Yes.

13 Q Before you got on the airplane to come here, did the FBI  
14 give you \$150 cash?

15 A Yes, they did.

16 Q And then last week, did you get \$500 more?

17 A Yes.

18 Q And do you expect to get \$500 again this week?

19 A Yes.

20 Q And do you expect to get \$500 every week until you go  
21 home?

22 A Yes.

23 Q Do you know when you will be flying home?

24 A I don't know.

25 Q When you lived at Hope Transition Center, were there

1 rules for the children?

2 A Yes, there were.

3 Q And were some of those rules, you can't sneak out?

4 A You could leave. I mean, you could go out, but you just  
5 couldn't go out too far.

6 Q And did you need to let the people in charge know where  
7 you were going?

8 A Yes.

9 Q And were there other rules about no fighting?

10 A Yes, there was a rule.

11 Q And no stealing?

12 A Yes.

13 Q And no lying?

14 A Yes, there was.

15 Q And sometimes the punishments were stand against a wall?

16 A Yes.

17 Q And sometimes for the more serious breaking of the  
18 rules, were you hit with a belt?

19 A Yes.

20 Q There was a time before Daniel was arrested when you got  
21 in serious trouble with Daniel for stealing some money?

22 A Yes.

23 Q Do you remember that?

24 A I remember.

25 Q And on that time you were punished more seriously; is

1 that right?

2 A Yes.

3 Q And he hit you several times with a belt?

4 A Yes.

5 Q And that was just before Mr. Johnson was arrested; is  
6 that right?

7 A Yes.

8 MS. MAXFIELD: I have no further questions. Thank  
9 you.

10 THE COURT: Redirect.

11 MR. SINHA: Yes, Your Honor, thank you.

12

13 REDIRECT EXAMINATION

14 BY MR. SINHA:

15 Q So LS X, thank you for speaking with us. I only have a  
16 handful more questions.

17 So the first thing I want to talk to you about is  
18 when you spoke to the Cambodian National Police officer, and  
19 also when you spoke to the people from the organization that  
20 is APLE, A-P-L-E.

21 That was the day on which Mr. Johnson was arrested,  
22 wasn't it?

23 A Yes.

24 Q And was it prior to that day that you told Pastor  
25 Sopheak that Daniel was abusing you?

1 A Before that day.

2 Q And I think you testified yesterday that it was a  
3 couple -- or two or three weeks before Mr. Johnson's arrest  
4 that you had told Pastor Sopheak that Daniel was abusing you;  
5 is that correct?

6 A Yes.

7 Q And I think you also said yesterday that prior to Daniel  
8 being arrested, you had told your brother ES XXX that Daniel  
9 was abusing you; is that correct?

10 A Yes.

11 Q And when the people from the Cambodian National Police  
12 and APLE talked to you, did you feel pressured to make up  
13 lies about Daniel Johnson?

14 A No.

15 Q Were there people who told the Cambodian National Police  
16 and APLE that Daniel Johnson had not abused them?

17 MS. MAXFIELD: Objection; personal knowledge.

18 THE COURT: Rephrase the question.

19 Q BY MR. SINHA: Sure. Do you know if there were people,  
20 kids at the orphanage, who told the Cambodian National Police  
21 that Daniel had not abused them?

22 A I didn't know, because they interviewed us separately,  
23 one individual at a time.

24 Q And when you say that they asked you the same question  
25 over and over again, and I think you said something like

1 that's the only way they would stop asking, do you mean that  
2 the way to make them stop asking was to tell them the truth  
3 about Daniel Johnson, or do you mean that the way to make  
4 them stop asking was to make up lies about Daniel Johnson?

5 A There were times that I told a lie, but there were times  
6 that I told the truth. But I just didn't tell all of it,  
7 just sparingly.

8 Q What was the lie that you told the Cambodian National  
9 Police?

10 A I lied. I said that he did good, he did good deeds and  
11 things like that.

12 Q Was that not true?

13 A Not true.

14 Q I want to talk to you a little bit about the  
15 organization Hagar. Do you know what kind of organization  
16 Hagar is?

17 A I do.

18 Q What kind of organization is Hagar?

19 A It is an organization to receive minors who have been  
20 raped, violated.

21 Q And what types of things does Hagar do for those minors?

22 A Each minor has a counselor.

23 Q And what does the counselor do?

24 A Therapy, asking you questions, encouraging you, talking  
25 to you, asking you questions.



1 Q Okay. And what do you understand the purpose of those  
2 things to be?

3 A They want to counsel you, they just want to know how you  
4 are feeling regarding those issues.

5 Q And when you started working with Hagar, how long after  
6 Daniel Johnson's arrest was that?

7 A I don't understand your question.

8 Q I am sorry. I will ask it again. Do you know how long  
9 after Daniel Johnson's arrest Hagar started providing you  
10 with services?

11 A Almost a year.

12 MR. SINHA: Your Honor, if I could confer with  
13 defense counsel for a moment. Just one moment.

14 (Discussion off the record between  
15 Mr. Sinha and Ms. Maxfield.)

16 MR. SINHA: Your Honor, I think we have a quick  
17 matter to bring up with the Court.

18 THE COURT: Let's go ahead and take a brief break.  
19 We will be in recess for 12 to 15 minutes.

20 (JURY OUT.)

21 THE COURT: LS X, you can be excused for a moment,  
22 if you will step out into the hallway.

23 MR. SINHA: So, Your Honor, the thing that I raised  
24 with Ms. Maxfield, and I want to make sure we're staying on  
25 the right side of everything before I ask it, is I would like

1 to ask the witness about his participation in the Cambodian  
2 prosecution of Mr. Johnson.

3 Because, I think, we want to dispel any implication  
4 that the services he's receiving from Hagar are as a result  
5 of his participation in the United States case.

6 So yesterday when Mr. Weinerman was cross-examining  
7 SO XXX, he asked SO XXX whether SO XXX had testified at the  
8 trial of Mr. Johnson. And we have already got out the fact  
9 of the arrest. And if I take -- I think the motion in limine  
10 that Mr. Johnson's counsel followed, it was about entering  
11 the conviction.

12 So we have no intention of obviously entering the  
13 conviction, or even the fact of conviction. But the jury is  
14 aware that Mr. Johnson was arrested, they are aware that  
15 there was a trial in which he could have testified. And I  
16 think that Hagar support that he received has nothing to do  
17 with our case. It was all predating our case, to my  
18 knowledge.

19 So what I would like to be able to do is ask if he  
20 participated in the Cambodian prosecution, and if, unlike  
21 SO XXX, he testified at trial.

22 MS. MAXFIELD: I believe that's beyond the scope of  
23 my cross-examination. I was very careful not to talk to this  
24 witness about anything that happened at the Cambodian trial.

25 I don't remember the conversation that he's talking

1 about that happened between S0 XXX and Mr. Weinerman, and  
2 perhaps he's better able to address the specifics of that.

3 THE COURT: My concern, Ms. Maxfield, is that your  
4 cross-examination certainly suggests that LS X is developing  
5 his facts based on an interest in moving to the United  
6 States, and not in telling the truth in order to prosecute  
7 Mr. Johnson.

8 Factually, he has testified in another proceeding  
9 that has nothing to do with him coming to the United States.  
10 I assume he testified consistently, that Mr. Johnson abused  
11 him. And it seems to me, based on your defense, that he's  
12 making this up in order to come to the United States, the  
13 government can rebut that with, in fact, he said the same  
14 story, made the same statements of abuse in a Cambodian  
15 prosecution. So I will allow the testimony.

16 MR. WEINERMAN: So I want to supplement the record,  
17 Judge, since we're getting to the opening the door thing.  
18 Part of the discovery is a translation of the trial verdict  
19 in the Cambodian case. And I think a reasonable  
20 interpretation of the translation is that S0 XXX testified in  
21 that trial that there was no wrongdoing, or it says something  
22 to the effect -- it's not in front of me, so I don't want to  
23 be held to saying exactly what the document says.

24 But the document says, in essence, that S0 XXX  
25 either testified that Daniel Johnson did not abuse him or he

1 withdrew previous accusations. So that was the point of me  
2 asking SO XXX yesterday that question to see if he would  
3 admit that he did testify in that case.

4 We're dealing with a translation, but I think a  
5 reasonable interpretation of it is that he did testify and  
6 did testify in an exculpatory fashion as to Daniel Johnson.  
7 He denied it. He said, I didn't testify. So I left it at  
8 that, and accepted his answer.

9 So that was the point in bringing that up. I didn't  
10 pull that out of whole cloth. There's a document that I  
11 think a reasonable interpretation of it would suggest that he  
12 did testify, and he withdrew any previous allegations of  
13 sexual abuse. But that was the purpose of bringing that  
14 question up, not what the government is claiming now has  
15 opened up the door to them inquiring about what is happening  
16 with Hagar.

17 THE COURT: Again, the relevance is that the defense  
18 is alleging that he is making up the accusation in order to  
19 come to the United States. When, in fact, he made an  
20 accusation in a Cambodian Court that isn't connected to any  
21 motivation that the defense is alleging. So I think we can  
22 keep it somewhat limited.

23 I don't want the conviction coming in from the  
24 Cambodia Court. I have already ruled on that. But I think  
25 he can be asked if he previously testified in a Cambodian

1 Court, if the abuse occurred, did he testify consistently  
2 with what you are telling us now.

3 The problem, I think, is listening to S0 XXX is that  
4 what they consider testimony is very different than the  
5 proceeding that they are going through today. But being  
6 asked questions in open court, my guess is that they made  
7 statements that were given to the judge prosecutor who  
8 considered them.

9 But it's unclear to me that -- what that testimony  
10 looks like. So I think it probably would be more appropriate  
11 that, did you make a statement to the Cambodian Court about  
12 being abused.

13 MR. SINHA: Thank you, Your Honor.

14 THE COURT: I just don't know what that -- maybe  
15 explore what that looks like, but I don't know if that's all  
16 that significant.

17 MR. SINHA: I don't want to misstate something to  
18 the Court. I suppose I don't know the extent to which the  
19 FBI may have communicated with Hagar at any point in this.  
20 So I -- my point was basically that we think Hagar would be  
21 supporting these victims regardless of the FBI and Federal  
22 prosecution, and I believe that's true. But I don't know, I  
23 suppose, just to be clear with the Court.

24 I have two other things I was hoping to raise with  
25 the Court. One, we would ask the Court in terms of the

1 judicial notice of fact, we would ask if you could instruct  
2 the jury after Mr. LSX steps down.

3 THE COURT: I plan on doing that.

4 MR. SINHA: And the other one is, there's a forensic  
5 interview of Mr. LSX that's about 37 minutes long -- about  
6 40 minutes long. And we think he's been asked -- we would  
7 like to play it as a prior consistent statement, and then I  
8 will --

9 MS. MAXFIELD: I am not impeaching him with any  
10 prior inconsistent statement. I don't think I have opened  
11 the door to them introducing the interviews that are  
12 consistent --

13 THE COURT: Your cross-examination is certainly  
14 aimed at suggesting to the jury he has a strong motivation to  
15 lie to come to the United States, and I think that's enough  
16 to bring in consistent statements.

17 MR. WEINERMAN: Judge, again, would it be a  
18 40 minute interview? I mean, there's not 40 minutes worth of  
19 statements. At a minimum, the government should have to  
20 bring forward just the actual consistent statement, and  
21 that's it. This is a long-ranging interview that covers a  
22 lot of different subjects, and I would suspect that the prior  
23 consistent statement would take up a minute or two.

24 MR. SINHA: So Your Honor, I think, if it were not  
25 the case that they asked Mr. LSX about the people who were in

1 the room with him and tried to, I think, imply that there was  
2 some coercive aspects or there were people influencing him in  
3 the course of this interview, I think we're fine going  
4 forward playing clips.

5 But for Mr. LSX, one, we think it's important  
6 because we're talking so much about the forensic interview,  
7 for the jury to see the entire forensic interview, because  
8 it's going to be so much, we think it's an issue in the  
9 expert testimony, and with the other witnesses.

10 And two, with him, they seem to have called into  
11 question the environment in which this interview took place,  
12 so we don't think it's sufficient to tell the complete story  
13 of the interview to just play a clip.

14 THE COURT: I agree.

15 MS. MAXFIELD: But it needs to be made clear to the  
16 jury that this is not the interview that we discussed. He  
17 and I discussed a very different interview with Cambodian  
18 National Police. And then I simply asked him who was present  
19 in the interview with Martha from the FBI. And I didn't ask  
20 about any content or whether he was questioned repeatedly.  
21 These are separate interviews.

22 THE COURT: I understand.

23 MR. SINHA: With the Court's permission, I will lead  
24 him into making sure that that is clear. And one last  
25 logistics question, we have the interview. It's in English

1 with the translator, but we also have translations that have  
2 been provided to Mr. Johnson's counsel. What we hope to do  
3 is hand out the written translations in case the jury wants  
4 to follow along, because they have a hard time hearing  
5 things. And then we will take them back afterward. And I  
6 would like for Mr. LSX --

7 THE COURT: Any objection to having the jurors read  
8 it?

9 MR. WEINERMAN: There's various translations, so it  
10 would be good to know which one they are using. So we may  
11 not like one, but may not have an objection to the other. It  
12 depends.

13 THE COURT: We will take a look at that, and take it  
14 up before we play it.

15 MR. SINHA: We could put an agent on to play this so  
16 Mr. LSX is not sitting up there listening to this again. But  
17 if Mr. Johnson's counsel would agree, because we would just  
18 ask for it to be played. I can introduce it through him, but  
19 we just ask that we play it after he's left the stand. That  
20 would be my request.

21 THE COURT: It occurs to me, recross on statements  
22 that were made -- he may have to come back to the stand.

23 MR. SINHA: Sure. Okay. Sure.

24 THE COURT: Any objection to Mr. LSX being off the  
25 stand while the tape is being played? You can recall him for



1 recross on what you hear.

2 MS. MAXFIELD: I am going to have to look at this,  
3 Judge. I didn't know we were going down this road. So you  
4 are saying that you don't want him to sit in while you are  
5 playing this?

6 MR. SINHA: I don't want -- I don't -- we don't want  
7 him to be sitting up there while we play this video.

8 MS. MAXFIELD: And what you are suggesting is that I  
9 simply have a chance to bring him back to ask questions about  
10 this once it's played?

11 THE COURT: It makes some sense to have him listen  
12 to it if you are going to ask questions about it.

13 MR. SINHA: We will have him stay there, then.

14 THE COURT: All right. Recess for ten minutes, and  
15 take a look at the transcription and see if you have any  
16 objection to that being handed to the jury.

17 (Brief recess taken from 10:28 a.m.  
18 to 10:47 a.m.)

19 MR. WEINERMAN: I have been told -- it takes us  
20 awhile. I have been told that there's nothing inflammatory  
21 that would be subject, let's say, to a 403 objection in this  
22 tape recording. But as we're going through it, we will read  
23 ahead, and if there is something that we feel should not be  
24 played for the jury, a portion of it, we would like  
25 permission to at least raise that concern with the Court

1 before it's played and they hear it.

2 THE COURT: Have you had time to go through it yet?

3 MR. WEINERMAN: Well --

4 THE COURT: Let's finish that up, and see if there's  
5 an area that you object to.

6 MS. MAXFIELD: (Reading document.)

7 MR. WEINERMAN: We're going to share it, Judge.

8 MS. MAXFIELD: We're on different standings.

9 (Brief recess taken from 10:48 a.m.

10 to a 10:55 a.m.)

11 MR. WEINERMAN: I think it would be best for the  
12 Court to identify the parties in there. So Martha, I think,  
13 is the FBI agent, and then there's Roth, who is the  
14 interpreter. I think the jury should know who that is.

15 THE COURT: We have some questions for LS X before  
16 we --

17 MR. SINHA: Yes, Your Honor.

18 THE COURT: Okay, bring the jury in.

19 (JURY IN.)

20 THE COURT: Please be seated. Mr. Sinha.

21 Q BY MR. SINHA: So LS X, I just have a handful more  
22 questions for you. So thank you for sitting with us all day  
23 this morning.

24 One thing I wanted to ask you about was your  
25 participation in the Cambodian case against Mr. Johnson. And

1 so as I understand it, on the day of Mr. Johnson's arrest,  
2 you talked to the Cambodian National Police and told them  
3 that Mr. Johnson had sexually abused you.

4 A Okay.

5 Q In the Cambodian case was there a point at which you  
6 also provided testimony to a Court in the prosecution?

7 A I spoke.

8 Q You spoke to a Court in Cambodia?

9 A Yes.

10 Q And did you talk to them about Mr. Johnson sexually  
11 abusing you?

12 A Yes.

13 Q And what did you tell them?

14 A I said like what he had done to me.

15 Q And are those the same things that you have told us when  
16 you talked to us about it yesterday?

17 A Yes.

18 Q And LS X, you talked a little bit about the organization  
19 Hagar. Do you know if Hagar was helping the -- do you know  
20 if Hagar got involved with you as part of the Cambodian case?

21 A Yes.

22 Q Do you know if it matters at all to Hagar what happens  
23 in the American case?

24 MS. MAXFIELD: Objection; based on personal  
25 knowledge.

1 THE COURT: Sustained.

2 Q BY MR. SINHA: Has anyone from Hagar ever indicated to  
3 you that your status with the organization would change if  
4 the American case didn't go forward?

5 A Can you ask that again?

6 Q Sure. Has anyone at Hagar ever told you that if the  
7 American prosecution of Mr. Johnson ended, or if you didn't  
8 participate, they would no longer help you?

9 A No.

10 Q What about Water of Life? That's where you are living.  
11 Did anyone at Water of Life tell you that if the American  
12 case didn't go forward or you didn't participate in it, you  
13 would get kicked out?

14 A No.

15 Q Do you believe that you staying at Water of Life has  
16 anything to do with the American case?

17 A I don't understand.

18 Q Do you believe that you staying at Water of Life will  
19 only continue if you participate in the American case?

20 A No.

21 Q So LS X, the next thing I want to talk to you about is  
22 we talked about some money that you were given before you got  
23 on the plane, and then also when you arrived in the United  
24 States.

25 Did anyone -- what do you understand that money to

1 be for?

2 A It was for food.

3 Q How are the prices of food in America, compared to the  
4 prices of food in Cambodia?

5 A A lot more pricey than Cambodia.

6 Q Have you used some of that money to buy food?

7 A Yes.

8 Q What about the money that you got before getting on the  
9 plane? Was that also for food?

10 A It was for something to eat at the airport -- airports.

11 Q And has anybody ever told you how much money you will  
12 receive -- let me start again.

13 Prior to Ms. Maxfield asking you, did you ever know  
14 how much money you were going to receive while you were in  
15 the United States?

16 A They did tell me, and they said it was like \$50 a day,  
17 or something like that.

18 Q So I have just a couple of more questions for you. The  
19 next thing I am going to do is I am going to show you what  
20 has been marked as Government's Exhibit 241 A, as in apple.

21 MR. SINHA: And I want to tell the Court,  
22 Exhibit 241 is a forensic interview of Mr. LSX that occurred  
23 in 2014 with an FBI forensic interviewer named Martha  
24 Finnigan. The reason there's an "A" after the exhibit number  
25 is because there were points in the room where everyone

1 except LS X left, and he was sitting there in silence.

2 So to try to cut it down a little bit, we have cut  
3 out those portions. But I can represent to the Court that we  
4 haven't cut out any portions where anyone was talking to  
5 LS X.

6 THE COURT: There's a third person mentioned that  
7 looks like a translator.

8 It's spelled "Roth," but may be pronounced  
9 differently.

10 MR. SINHA: It's spelled R-O-T-H. My understanding  
11 is that it's pronounced "Rohat," but that's the third person  
12 in the room. He's a translator to help translate the English  
13 into Khmer.

14 THE COURT: We will play the exhibit. And folks,  
15 Ms. Pew will hand out what is a transcription of the  
16 interview to assist you in reading along with the exhibit  
17 that is played. You will not get to keep the transcript, but  
18 it is there to help you understand the video.

19 MR. SINHA: Your Honor, if this is not being  
20 published to the jury, I would ask that it be published.

21 THE COURT: We are publishing it, correct.

22 (Video Played.)

23 MR. SINHA: Thank you, Your Honor. The government  
24 passes this witness.

25 THE COURT: Any follow-up questions based on the

1 video?

2 MS. MAXFIELD: Just a couple.

4 RECROSS EXAMINATION

5 BY MS. MAXFIELD:

6 Q LS X, have you spent all the money on food?

7 MR. SINHA: Objection; beyond the scope.

8 THE COURT: Overruled.

9 Go ahead.

10 THE WITNESS: Yes, I have.

11 Q BY MS. MAXFIELD: It's all gone?

12 A No, not all of it, because I shared with my older  
13 brother.

14 Q Okay. Did your older brother get some money, too?

15 A Yes.

16 Q When we listened to the tape, Martha asked you whether  
17 you got any gifts after Daniel touched you, and you said  
18 this: "He gave on Christmas, but when he did that he didn't  
19 give."

20 A At times I received them, but sometimes I didn't. So  
21 sometimes he gave me money, sometimes he gave me cookies.

22 Q And the only other thing I wanted to talk to you about,  
23 and maybe this is because I goofed. You talked to two FBI  
24 agents; is that right?

25 A Yes.

1 Q One was FBI Martha, the person we just listened to, and  
2 the other person was FBI Daniel; is that right?

3 A Daniel, I didn't get to speak to him very much, because  
4 as soon as Martha walked in, he left.

5 Q Okay. Did you go to talk to the FBI two different  
6 times?

7 A Yes.

8 Q I want to play a clip for you and ask you if it helps  
9 you remember something.

10 MS. MAXFIELD: Could you play ID 1902?

11 MR. SINHA: I object, Your Honor. It's beyond the  
12 scope.

13 THE COURT: It's beyond the scope, and I don't know  
14 if it would play -- to refresh his memory on something, if we  
15 play it in front of the jury.

16 MS. MAXFIELD: I wonder if -- it's not in Khmer, so  
17 I don't know how to do it.

18 Q BY MS. MAXFIELD: Let me ask you this, do you remember  
19 speaking with Agent Dan --

20 MR. SINHA: I object to the content of this  
21 question. He can be refreshed on whether he spoke to him,  
22 but the content of their conversation, I don't think he  
23 said -- I don't know where we are with that in regards --

24 THE COURT: I will have to hear the question first  
25 before I can rule.



1 Q BY MS. MAXFIELD: Do you remember telling Agent Daniel  
2 that -- you told him you wanted to live in the United States?

3 A I am not quite sure.

4 MS. MAXFIELD: Well, I am not going to keep you here  
5 over lunch. We will leave it right there. Thank you.

6 THE COURT: Thank you very much. You can be excused  
7 at this time. You could be called back later as a witness,  
8 so please be available.

9 THE WITNESS: Yes.

10 THE COURT: Folks, I will read to you what is a  
11 judicially noticed fact, so this is a fact that you can  
12 accept as true in the case.

13 In accordance with Title 28, Section 1829 of the  
14 United States Code, Any fact witness for either party must be  
15 paid a \$40 witness fee for each day they attend trial, and  
16 for each day necessarily occupied going to and returning from  
17 the place of attendance. The same familiar law requires that  
18 in addition to travel-related witnesses, fact witnesses must  
19 be paid a subsistence allowance. The subsistence allowance  
20 paid to any fact witness in this case will be the current  
21 Federal per diem rate for Eugene, Oregon, of \$59 a day.

22 So folks, we're going to break for lunch. We'll  
23 have you back at 1:15, and we will resume at that time with  
24 our next witness.

25 (JURY OUT.)

1 THE COURT: Okay. We're recessed until 1:15.  
2 (Proceedings concluded at  
3 11:55 a.m.)  
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1 STATE OF OREGON )

2 ) ss

3 COUNTY OF YAMHILL)

4  
5 I, Deborah L. Cook, RPR, Certified Shorthand  
6 Reporter in and for the State of Oregon, hereby certify that  
7 at said time and place I reported in stenotype all testimony  
8 adduced and other oral proceedings had in the foregoing  
9 hearing; that thereafter my notes were transcribed by  
10 computer-aided transcription by me personally; and that the  
11 foregoing transcript contains a full, true and correct record  
12 of such testimony adduced and other oral proceedings had, and  
13 of the whole thereof.

14 Witness my hand and seal at Dundee, Oregon, this  
15 2nd day of May, 2018.

16  
17 /s/ Deborah L. Cook, RPR, CSR

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19 DEBORAH L. COOK, RPR  
20 Certified Shorthand Reporter  
21 OREGON CSR #04-0389  
22 CALIFORNIA CSR #12886  
23 WASHINGTON CSR #2992  
24  
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